

REMARKS/ARGUMENTS

In response to the Final Office Action mailed August 3, 2009, Applicants propose to amend their application and request reconsideration in view of the amendments and the following remarks. In this amendment, Claims 1 and 8-12 are proposed to be amended, no claims have been added, Claims 3-7 and 13-17 are proposed to be cancelled without prejudice and Claims 18 and 20-34 have been previously withdrawn from consideration so that Claims 1, 8-12, 18 and 20-34 are currently pending. No new matter has been introduced.

Claims 1 and 3-17 were rejected as being unpatentable over U.S. Patent No. 5,904,697 to Gifford, III et al. (Gifford) Kanner (Kanner) in view of U.S. Patent No. 6,113,612 to Swanson et al. This rejection is respectfully traversed.

In order to make a finding of obviousness, an Examiner must (1) determine the scope and content of the prior art, including non-analogous art if it is in the field of endeavor reasonably related to the particular problem to which the claimed invention is directed, (2) ascertain the differences between the claimed invention and the prior art, considering both the prior art and claimed invention as a whole, and (3) resolve the level of ordinary skill in the art at the time of the invention, factoring in the creativity that one of ordinary skill in the art would employ as well as the Examiner's own knowledge and technical expertise.

It is respectfully submitted that the references taken as a whole fail to disclose or suggest all of the claimed limitations.

Gifford does in fact teach an anastomosis device.

Swanson discloses an anastomosis apparatus. The apparatus has axial spaced portions that include members that are radially outwardly deflectable from other portions of the apparatus. The device may include polymers and therapeutic agents.

These polymers and therapeutic agents may be part of discrete bands affixed to the device.

Neither of the references, whether taken alone or in combination, discloses or even suggests the device of amended independent claim 1. One of ordinary skill in the art would not have been taught to utilize the specific copolymers and rapamycin as a coating on the anastomosis device as claimed. Accordingly, reconsideration and withdrawal of the rejection is respectfully requested.

A favorable Action on the merits is earnestly solicited.

Respectfully submitted,

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